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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 JONATHAN W. MCKINNEY,

11 Plaintiff,

12 v.

13 JOHN MILLS, et al.,

14 Defendants.

No. C08-5720 BHS/KLS

ORDER DIRECTING SERVICE BY U.S.  
MARSHAL OF AMENDED COMPLAINT

15  
16 This civil rights action has been referred to United States Magistrate Judge Karen L.  
17 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. On November 16,  
18 2009, this court recommended denial of Plaintiff's motion to amend and dismissal of Plaintiff's  
19 complaint without prejudice for failure to exhaust. Dkt. 26. In response, Plaintiff filed a  
20 proposed second amended complaint. Dkt. 28. Upon review, the District Court found that the  
21 proposed second amended complaint alleges facts that, if true, could establish that Plaintiff's  
22 attempts to engage in the prison's grievance process were thwarted by the prison staff. Dkt. 29,  
23 p. 2.  
24

25 Accordingly, Plaintiff's motion for leave to amend (Dkt. 24) is **GRANTED** and the  
26 proposed Second Amended Complaint (Dkt. 28) shall be filed. The Second Amended

ORDER DIRECTING SERVICE - 1

1 Complaint names the Pierce County Jail, James Mills<sup>1</sup>, Sgt. Jones and Rob Masko as defendants.  
2 Defendant John Mills has been previously served in this matter. Plaintiff has provided service  
3 copies and marshal forms for service of the Second Amended Complaint on Defendants Jones  
4 and Masko.

5 Accordingly, it is **ORDERED** that the United States Marshal shall effect service of  
6 Plaintiff's Second Amended Complaint on Defendants Jones and Masko as follows:  
7

8 (1) Service by United States Marshal

9 The United States Marshal shall send the following to each named Defendant for whom  
10 there is a filled out service form by first class mail: a copy of the Second Amended Complaint  
11 and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of  
12 Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed  
13 to the Clerk's Office. All costs of service shall be advanced by the United States. **The Clerk**  
14 **shall assemble the necessary documents to effect service and shall send a courtesy copy of**  
15 **the Complaint to the Pierce County Prosecutor's Office.**  
16

17 (2) Response Required

18 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of  
19 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty**  
20 **(60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a  
21 motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil  
22 Procedure.  
23  
24  
25

26 <sup>1</sup> Plaintiff previously identified this defendant as "John" Mills and John Mills was served with the First Amended Complaint. Dkts. 6 and 12.

1 Any defendant who fails to timely return the signed Waiver will be personally served  
2 with a summons and complaint, and may be required to pay the full costs of such service,  
3 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or  
4 motion permitted under Rule 12 within **thirty (30) days** after service.

5 (3) Filing and Service by Parties, Generally  
6

7 All original documents and papers submitted for consideration by the court in this case,  
8 are to be filed with the Clerk of this court. The originals of all such papers shall indicate in the  
9 upper right-hand corner the name of the Magistrate Judge to whom the copies are to be  
10 delivered. The papers shall be accompanied by proof that such documents have been served  
11 upon counsel for the opposing party (or upon any party acting *pro se*). The proof shall show the  
12 day and manner of service and may be written acknowledgment of service, by certificate of a  
13 member of the bar of this court, or by affidavit of the person who served the papers.  
14

15 (4) Motions  
16

17 Any request for court action shall be set forth in a motion, properly filed and served. The  
18 motion shall include in its caption (immediately below the title of the motion) a designation of  
19 the Friday upon which the motion is to be noted upon the court's calendar. That date shall be the  
20 third Friday following filing of the motion (fourth Friday for Motions for Summary Judgment).

21 All briefs and affidavits in opposition to any motion shall be filed and served not later than 4:30  
22 p.m. on the Monday immediately preceding the Friday appointed for consideration of the motion.

23 If a party fails to file and serve timely opposition to a motion, the court may deem any opposition  
24 to be without merit. The party making the motion may file, not later than 4:30 p.m. on the  
25 Friday designated for consideration of the motion, a response to the opposing party's briefs and  
26 affidavits.

